The State Vs. Babulal

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Court : Rajasthan

Decided On : Sep-07-1964

Reported in : AIR1965Raj90; 1965CriLJ483

Judge : D.M. Bhandari and; V.P. Tyagi, JJ.

Acts : Evidence Act, 1872 - Sections 32(5), 45 and 163; Code of Criminal Procedure (CrPC) , 1898 - Sections 342; Indian Penal Code (IPC), 1860 - Sections 361 and 363

Appeal No. : Criminal Revn. No. 142 of 1963 and Criminal Appeal No. 54 of 1963

Appellant : The State

Respondent : Babulal

Advocate for Def. : Bhim Raj, Adv.

Advocate for Pet/Ap. : Raj Narain, Deputy Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Tyagi, J.

1. These are two matters arising out of the judgment of the learned Addl. Sessions Judge, Jodhpur dated 8th January, 1963. D.B. Criminal Appeal No. 54 of 1963 is

the appeal tiled by accused Babulal against his conviction under Section 363, Indian Penal Code and sentence of two months' simple imprisonment and a fine of Rs. 50/-, or in default to further undergo simple imprisonment for fifteen days. D. B. Criminal Revision No. 142 of 1963 is the revision filed by the State for the enhancement of the sentence of Babulal.

2. Learned counsel for the appellant has assailed the Impugned judgment only on two grounds. (1) that the learned judge has recorded his finding about the age of girl on the basis of the documents which were inadmissible in evidence, and (2) that in view of the circumstances alleged to have been established by the prosecution no offence under Section 363 Indian Penal Code is made out against the appellant as Mst. Lakshmi had left her father's house temporarily. It will be advisable to set out in brief the prosecution story which runs as follows:

3. Lakshmi, a minor girl aged about 15 years, used to reside at Chand Pole Mohalla in the city of Jodhpur with her father Khan Chand. On 8-10-1961 Mst. Lakshmi left her father's house at 6 a. m. to bring milk from the market but as the milk was not available at normal rates at the Chand Pole, she proceeded towards Khanda Falsa. When she reached the turning of Phulerao-ki-Ghati, Babulal appellant met her and enquired from her as to where she was going. When he came to know that she was going to purchase milk from Khanda Falsa, he told her that he was also going to that side for the same purpose and, therefore, he requested her to accompany him on his cycle. It is alleged that Lakshmi, at first, hesitated to go with him on his bicycle but when he told her that her father had directed him to take her to Khanda Falsa, she believed the accused and agreed to go with him on his cycle. When the accused reached Khanda Falsa she asked him to leave her there but the accused insisted that she must proceed to Siwanchi Gate where she is likely to get milk at cheaper rate. On reaching Siwanchi Gate, Babulal took Lakshmi against her will in the house of his friend Man Mohan and threatened her with a knife.

It is further alleged that Babulal left Lakshmi in that house and joined her agajn at 6 P. M. and remained with her in the night in a room where he is said to have committed rape on her. During the night she was told that she would be taken to

the court next morning where she shall have to swear an affidavit to the effect that she was 19 years of age and that she had left her house and gone with Babulal of her own free will with a view to marry him. Next morning Babulal procured Sari, petticoat and blouse from the wife of Man Mohan and after changing her clothes, Lakshmi was taken in is Tonga to the court precincts where she met a lawyer who prepared an affidavit for her and got the same duly verified by the Railway Magistrate. Thereafter Lakshmi was taken hack to the house of Man Mohan and it was at about 9.30 in the night that Babulal took her to the Railway bridge where, according to the prosecution, Lakshmi entreated Babulal to take her back to her father's house, and it was, therefore, at midnight that Babulal left her near the house of her father and directed her to convey him that in the eye of law she was married to Babulal and that her father should now perform the marriage in accordance with the customary rites.

4. In the meanwhile, when Lakshmi did not return her home on 8-10-1961 her father started a search for her and somewhere in the afternoon he came to know from prosecution witnesses Daulat Ram and Tejraj that Lakshmi was seen going with the appellant on his cycle. At 5 P. M. Khanchand lodged a report at the city Police Station. On the 9th when Lakshmi came back the Police was informed by Khanchand. A case was, therefore, registered under Sections 366 and 376 Indian Penal Code against Babulal. On being challanged, Babulal was eventually committed to the Court of Session to face the trial under the aforesaid offences.

5. Learned Additional Sessions Judge after recording the statements of seventeen prosecution and two defence witnesses came to the conclusion that Lakshmi was, at the relevant time, below 16 years of age, and that she was taken away by Babulal appellant from the keeping of the lawful guardianship of her father. The accusation about committing rape with Lakshrni was, however, found to be false and, therefore, he was acquitted of the charge under Section 376 Indian Penal Code but he was convicted for an offence under Section 363 Indian Penal Code. While passing the sentence, the learned Judge took a lenient view of the matter because of certain facts which he considered to be extenuating circumstances which shall be dealt with by us while disposing of the revision application of the State.

6. The entire case of the appellant hinges on the question of the age of Lakshmi. The main argument of Mr. Bhimraj is that the learned trial Judge has erred in placing reliance on the statement of Khanchand (P. W. 5) which does not find corroboration from any independent piece of evidence. His contention is that the Teva (Janma Patri) Ex. P. II, School leaving certificates Exs. P 16 and P 20, and the admission form of Lakshmi Ex. D 2 summoned by the defence to cross-examine the Head Mistress Mst. Santab Devi (P. W. 17), could not be read in evidence as they were not admissible in evidence.

7. Regarding the Teva Ex. P II, it is admitted by the defence that it was produced from the possession of Khanchand, the father of the girl, but the argument of the learned counsel is that it cannot be read in evidence unless jt was proved by producing the author thereof in the witness box. The statement of Khanchand (P. W. 5) in this connection is that the document Ex. P. II was prepared by one Ram Chandra of Hyderabad (Sind) who was the Purohit of their family, that it is in the hand of Ram Chandra whose whereabouts are not known to him since he left his home in Sind on the occasion of the formation of Pakistan and that it bears an endorsement between C to D in the hand of his father Nenumal and it was written in his presence at the time of Namkaran Sanskar of the girl Lakshmi when it was read over to all the persons who attended that ceremony, and that his father Nenumal died about 9 or 10 years back, but in the cross-examination he admitted that he does not know Hindi and, therefore, he cannot read the contents of the document.

On the basis of this admission of the witness it was vehemently urged that the statement of Khanchand does not prove Ex. P II to have been executed by Ram Chandra as the witness cannot identify the hand-writing of the author of the Teva; therefore, the horoscope is no evidence to prove the date of birth of Smt. Lakshmi. In support of his argument, he referred us to two Kerala cases, namely, Vishnu Maheswaran v. Kochitty Kuruvila, AIR 1957 Ker 103 and Chirutha Amma v. Neelakanta Pillai, AIR 1957 Ker 106.

On the other hand, Deputy Government Advocate, contended that the document Ex. P. II is admissible in evidence under Section 32(5) of the Evidence Act, as

Ramchandra, the author of the document is untraceable and therefore he could not be produced as a witness in the Court. He further contended that the genuineness of this document cannot be doubted because of the endorsement made by the father of Khanchand who is no more in this world and, therefore, the date of birth of Mst. Lakshrni entered in the endorsement cannot be doubted. It was also argued that Khanchand has always given the date of birth of Mst. Lakshmi as 7th March, 1946 which is borne out from the documents Ex. P. 16 and Ex. P 20 the school leaving certificates and from Ex. D.6, an application for admission, signed by Khanchand on 1-5-1952 and brought on the record by the defence itself.

8. In view of the fact that generally Hindusliving in Sind (Pakistan) left their homes with the creation of Pakistan and scattered in India to get themselves rehabilitated at a place suited to them, the statement of Khanchand cannot be disbelieved that Ramchandra, after he had left Hyderabad (Sind), is not traceable and it was not possible to produce him as a witness in the court to prove the execution of Ex. P. II. Under these circumstances, this document becomes a relevant piece of evidence under Sub-section (5) of Section 32, Evidence Act read with Illustration (i) given thereunder as it speaks of the creation of relationship between Lakshmi and Khan Chand. Mr. Bhimraj also does not dispute this proposition that in the absence of positive knowledge regarding the whereabouts of Ramchandra, Teva Ex. P. 11 will become admissible in evidence under the aforesaid provision of the Evidence Act, but his contention is that the execution of this document by Ramchandra has not been proved by the statement of Khanchand (P. W. 5) who says that he cannot read the contents of the Teva as he does not know Hindi and, therefore, he could not identify the hand-writing of Ram Chandra. We agree with the contention of Mr. Bhimraj that in view of this statement of Khanchand (P. W. 5), the execution of the document Ex. P. II by Ramchandra cannot be said to have been proved by the prosecution, and as such no support can be drawn from this piece of documentary evidence to corroborate the oral testimony of Khanchand.

9. Relying on the endorsement made by Nenumal from C to D on Teva Ex. P. II, learned Deputy Government Advocate vehemently urged that this part of the document (writing by Nenumal between C to D) cannot be ignored and shall be

admissible in evidence as it has been proved by Khanchand that his father had made that endorsement in his presence when the Janma Patri was react at the Namkaran Sanskar of Lakshmi Learned) counsel for the appellant has, on the other hand, contended that this endorsement cannot be used as an evidence against the appellant as it was not put to him in his examination under Section 342 Cr. Procedure Code and thus the accused was denied a reasonable opportunity to explain this piece of evidence. In support of this contention reliance has been placed on the observations of their Lordships of the Supreme Court in Machander v. State of Hyderabad, (S) AIR 1955 SC 792 and Hate Singh Bhagat Singh v. State, of Madhya Bharat, AIR 1953 SC 468.

In AIR 1953 SC 468 both the trial court and the High Court convicted the accused while taking into consideration a circumstance that the accused had absconded after the incident, but no question was put to him to explain the conduct of the accused when he was examined under Section 342, Cri. P. C. Their Lordships of the Supreme Court in the circumstances of that case observed :

'We have a further comment to make. Both the Sessions Judge and the High Court have attached importance to the fact that both accused absconded, but at no stage of the case have they been asked to explain this. We have stressed before the importance of putting to the accused each material fact which is intended to be used against him and of affording him a chance of explaining it if he can. We regret to find that this rule is so often ignored.'

10. In (S) AIR 1955 SC 792, the accused was charged with murder and he was ready to disclose everything on the day of Ms arrest, but the police waited for six days before his confession was recorded by a Magistrate. He was not questioned by the Sessions Judge under Section 342, Criminal Procedure Code about that confession and while recording the conviction of the accused that confession was taken into consideration by the trial Judge, and that conviction was also upheld by the High Court. In that context, their Lordships of the Supreme Court held that

'the error of not putting the confession to the accused while discharging their duty under Section 342, Criminal Procedure Code by the Court could not be taken a mere technicality.'

The conviction was, therefore, set aside and the Supreme Court refused to order a re-trial because the accused had already remained behind the bars for over 4 1/2 years.

11. In this connection, Mr. Raj Narain has also cited the latest Supreme Court case in Jai Dev v. State of Punjab, AIR 1963 SC 612 where their Lordships of the Supreme Court have observed as follows :

'The ultimate test in determining whether or not the accused has been fairly examined under Section 342 would be to enquire whether, having regard to all the questions put to him, he did get an opportunity to say what he wanted to say in respect of prosecution case against him. If it appears that the examination of the accused person was defective and thereby a prejudice has been caused to him, that would no doubt be a serious infirmity. It is obvious that no general rule can be laid down in regard to the manner in which the accused person should be examined under Section 342. Broadly stated, however, the true position appears to be that passion for brevity which may be content with asking a few omnibus general questions is as much inconsistent with the requirements of Section 342 as anxiety for thoroughness which may dictate an unduly detailed and large number of questions which may amount to the cross-examination of the accused person.'

12. In the instant case, we find that a question No. 20 was put to the accused while he was examined under Section 342, Criminal Procedure Code in this form:

'Witness Khanchand states that Lakshmi was born on 7-3-1946 and that her Teva was prepared at the time of her birth which is Ex. P. II.'

13. The accused, however, in his reply, expressed his total ignorance about this fact. This question and the answer of the accused show that the case of the prosecution regarding the date of birth of Lakshmi as entered in the Teva (Ex. p.II) was put to the accused tq which he expressed his ignorance. The observations made by their Lordships of the Supreme Court in (S) AIR 1955 SC 792 and AIR 1953 SC 468, in these circumstances, cannot, therefore, be used by learned counsel to help his client as it cannot be sajd that material fact which was intended to be used against the accused was not put to him for his explanation when he

was examined under Section 342, Criminal Procedure Code.

It may also be pointed out that Mr. Bhimraj has not even suggested in his arguments that the case of the accused appellant was in any manner prejudiced by not putting any question to the accused about the endorsement made by Nenumal on Ex. p.II, As observed above, a specific question was put to the accused about document Ex. p.iI on which this endorsement finds place. It would have been better if a separate question had been put to the accused regarding this piece of documentary evidence, namely, the endorsement made by a dead person on the Teva Ex. p.iI but this defect, in our opinion, has not caused any prejudice to the defence because the accused expressed his ignorance while answering the question No. 20 which relates to the date of birth of Lakshmi, and the preparation of the Janma Patri Ex. p.iI. 14. The endorsement between C to D on Ex. p.iI reads as follows:

^^yNeh /kh; [kkupaUn iqV HkkbZuS.kwey tUe Fkh;ks rkjh[k 2 iksg lqcg Qxq.k 2002] cjkcj 7 ekpZ 1946 o 7&5yxs fol;r izHkkr osyk v:.kksn;**-

15. Khanchand (P. W. 5) has categorically stated that it was made by his father Nenumal in Pakistan when Lakshini was born, and the document was read over to those who attended the Namkaran Sanskar. He has also testified that Nenumal died about 9 or 10 years before the witness was examined. Under these circumstances, the genuineness of the endorsement cannot be doubted by us. This endorsement in our opinon fully corroborates the statement of Khanchand about the date of birth of Mst. Lakshmi that she was born on 7th March, 1946.

16. Regarding documents Exs. P.16 and P.20, Mr. Bhimraj has vehemently contested that they are inadmissible in evidence because they are the copies of the school leaving certificates of certain aided schools for which it cannot be said that they were kept by a public servant in the discharge of his official duty. Mr. Raj Narain, however, conceded that these two documents do not fall within the category of the documents mentioned in Section 35 of the Evidence Act, but he pleaded that the date of birth entered in these two school leaving certificates tallies with the date of birth in Ex. D.6 which was a document relied upon by the defence and summoned by it to cross-examine the Head Mistress. According to learned

Deputy Govt. Advocate, the accused is bound by his own document which goes to establish the prosecution case about the date of birth of Mst. Lakshmi.

17. We save our anxious consideration to the arguments advanced by either side. There is no evidence on the record to prove the execution of Ex. D.6 by Khanchand. When Khanchand came in the witness box this document was not before the Court and, therefore, no question could be put to him regarding the execution of that document. No provision of law has been pointed out to us by learned Deputy Government Advocate whereby a document not duly proved could be read in evidence against the accused simply because it was summoned by the defence. In criminal matters, production of a document at the instance of one party or the other cannot bind the party that got it on the record unless it is proved in accordance with tho provision of law. Mere production of a document is, therefore, not sufficient to treat it as evidence unless it is duly proved. We are of opinion that prosecution cannot take any advantage of the mere presence of Ex. D.6 which has not been proved either by the prosecution or the defence.

18. The oral testimony of Khanchand (P. W. 5) who has categorically stated on oath that his daughter Lakshmi was born in Pakistan on 7th March, 1946 and that a Teva was prepared and was read over to him at the ceremony of Namkaran of Lakshmi cannot be disbelieved by us.

There is no doubt that the Teva between A to B on Ex. P II alleged to have been prepared by Ramcnandra cannot be read in evidence as it cannot be said to have been proved by the statement of Khanchand to be in the hand of Ramchandra, hut the endorsement made on this document by Nenumal between C to D cannot be discarded by us as it has been proved by prosecution witness No. 5 to be in the hand of Nenumal. This endorsement on Ex. P.II lends a support to the oral testimony of Khanchand which goes to prove the date of birth of Lakshmi as 7th March, 1946. We, therefore, do not find any reason not to accept the finding of the learned Judge regarding tho age of the girl.

19. Mr. Bhimiaj has, however, drawn our attention to the statements of two doctors Hargovind (P. W. 15) and B.S. Sharma (P. W. 14) who have stated that the age of Lakshmi appears to be between 16 and 18 years. Dr. Sharma in his cross-

examination has deposed that on the day when the girl was examined by him, her age could be of 18 years but it should be below 19 years. Dr. Hargovind has also stated that Lakshmi could be of 18 years and looking to her physical development the greater probability was towards her being of 18 years. On the basis of the opinions of these doctors, it is urged by Mr. Bhimraj that we should disbelieve the statement of Khanchand and benefit of doubt should be given to the appellant as, according to the doctors, it was more probable that Lakshini had attained the age of 18 years at the relevant time. We regret, we cannot accept this argument of learned counsel as it is based on mere opinion which speaks of probabilities as against a definite assertion of the father of the girl about the date of birth which, in our opinion, stands proved beyond any shadow of doubt.

20. Regarding the second contention, it was urged that Mst. Lakshmi met the appellant on the way and then she went with the accused voluntarily. It was also urged by Mr. Bhimraj that it was at the persuasion of the appellant that she was made to go back to her parent's house next evening after she had sworn an affidavit before the Magistrate. Under these circumstances, it is pleaded that it cannot be said that Lakshmi was taken out of the keeping of the lawful guardianship of her father by the accused.. It was further urged that Lakshmi left her father's house for a particular purpose, namely, tor swearing an affidavit with a view to bring pressure on. her parents to persuade them to marry her with the accused, and when that purpose was over she returned to her home. This temporary absence of the girl from her father's house, according to Mr. Bhimraj, cannot be interpreted as taking away the girl out of the kwoing of her lawful guardian. In support of this argument he referred a Division Bench authority of this Court in Balmukan v. State, AIR 1952 Raj 123 and also a case of the Allahabad High Court in Nura v. Rex, AIR 1949 All 710.

Mr. Raj Narain, on the other hand, has contended that in the circumstances, of this case, it cannot be said that Lakshmi went with the accused out of her own free will and that too only for the purpose of swearing the affidavit, but, according to him, she was taken by Babulal under such circumstances that she can be said to have been taken out of the keeping of the lawful guardianship of Khan Chand, and in this connection he placed his reliance on Abdul Sathar v. Emperor, AIR 1928 Mad

585, In re Abdul Azeez, AIR 1954 Mad 62. The State v. Sulekh Chand, AIR 1964 Punj 83 and Debaprosad Bose v. The King, AIR 1950 Cal 406.

21. Before dealing with the authorities cited by learned counsel of either side, it would be convenient to consider the relevant facts as established by the prosecution. These facts may help us to find out whether the act of the accused falls within the definition of kid'napping as given in Section 361, Indian Penal Code. It is admitted by the accused, in his examination before the committing Court that he developed intimacy with Laksbmi and letters were exchanged between him and Lakshmi through one Sindhi shopkeeper whose name he refused to disclose. The facts of taking the girl on his cycle and keeping her in the house of Man Mohan for the whole day, and then taking her next day to the Court for the (sic) of the affidavit and thereafter to remain with the girl up to late in the night have not been challenged by the learned counsel for the appellant. It is in the light of these circumstances that we have to judges the correctness of the objection of Mr. Bhimraj whether an offence under Section 363, Indian Penal Code is made out against the appellant.

22. In Bahnukan's case, AIR 1952 Raj 123 one Sanwarja was charged under Sections 366A and 376, Indian Penal Code for taking away minor girl under 16 years of ago who, according to the facts established by the prosecution, was found to be willing to go out with the accused for sexual intercourse. No undue influence or force was, however, used by the accused in that case for taking away the girl for that purpose. Chief Justice Wanchoo, as he then was, in those circumstances, observed as follows:

'Further, we may add that it cannot be said that the girl was either kidnapped or abducted in this case. There was no abduction because we are satisfied that the girl was not compelled by force or induced by any deceitful means to go with Sanwaria. There was no kidnapping either, even though the girl is below the age of 16 years, because there never was any intention of taking the girl out of the guardianship of her father and what the two of them wanted was to go away for a short time in order to have a good time.'

23. In the Allahabad case, AIR 1949 All 710, it was held that where a minor girl voluntarily left the roof of her guardian and when out of his house, comes across another, who treats her with kindness, or at least without employing any force or practising any fraud- on her, he cannot be held guilty under Section 361.

24. In Balmukan's case, AIR 1952 Raj 123, the learned Chief Justice was persuaded not to hold Sanwaria guilty under Section 366 because the girl was taken away by him only for a short time and that too for a specific purpose. Under the circumstances of that case, the learned Chief Justice refused to accept the plea of the prosecution that the girl was taken out of the keeping of the lawful guardianship because after some time she returned to her home. That is not so in this case because Lakshmi was kept away from the guardianship of her father for two days.

25. Regarding the Allahabad case it may be pointed out that the law laid d'own by their Lordships of the Allahabad High Court in AIR 1949 All 710 was not followed by the same High Court in Rashid v. State, 1953 Cri LJ 924 : (AIR 1953 All 412), and, therefore, appellant cannot draw any strength from such a ruling. Srinivasa Ayyangar, J. in AIR 1928 Mad 585 has observed:

'The expression 'taking' in Section 361 is not confined to mere physical taking. There is such a taking as is indicated in the common expression, 'If, you will come along, I shall take you'. The expression taking out of the keeping of the lawful guardian must, therefore, signify some act done by the accused which may be regarded as the proximate cause of the person going out of the keeping of the guardian or in other words, an act but for which the person would not have gone out of the keeping of the guardian as he or she did.'

26. Ramaswami, J. in AIR 1954 Mad 62 has dealt with the meaning of the word 'taxes' in Section 361, Indian Penal Code and has observed :

'The word 'takes' in Section 361, Penal Code does not imply force actual or constructive. It means that the accused was a party to the act of depriving the lawful guardian of the possession of the minor girl, her willingness being immaterial. The 'taking' which constitutes an offence is completed as soon as the

girl is removed from the keeping of the lawful guardian. It does not mean continuing or continuous act. The mere fact that a minor leaves the protection of her guardian does not put her out of the guardian's keeping. If, however, it is proved that a minor had abandoned her guardian with no intention of returning back she cannot thereafter be deemed to continue in the keeping of the guardian. What will be deemed to be sufficient to constitute an abandonment of a guardian by a minor girl depends upon the facts of a particular case.'

27. In R. v. Robins, (1844) 1 C. and K. 456 it was held that where the girl left her home alone by a preconcerted arrangement with the prisoner and went to a place appointed, where she was met by him, and that they then went off together without the intention of returning; it was held that since upto the moment of her meeting with the defendant she had not absolutely renounced her father's protection. In 'R v. Robb', (1864) 4 F. and F. 59, it was held that it is only necessary that the influence of the prisoner must instigate or co-operate with the inclination of the minor at the time the final step is taken for the purpose of causing it to be taken.

28. Chief Justice Falshaw sitting with Iindra Lal, J. in AIR 1964 Punj 83, observed:

'In Section 361 which defines the offence of kidnapping from lawful guardianship all that is required is that a minor under 16 in the case of male and 18 in the case of female must be 'taken or enticed' from the keeping of the lawful guardian. 'Taking' implies neither force nor misrepresentation and if a girl of less than 18 is taken away from the keeping of her lawful guardian, even at her own wish the offence of kidnapping is established. Hence the fact that the girl js a consenting party does not affect the commission of the offence.'

29. From the above referred observations of the learned Judges, it is obvious that the willingness of the girl in leaving the house of her guardians and going with the accused does not aSect the commission of an offence under Section 361, Indian Penal Code. If it was the influence of the accused that instigated the minor girl to go out of the keeping of her guardian then the accused cannot absolve himself from the criminal liability under the plea of willingness of the minor girl. In the instant case, Lakshmi, no doubt, left her father's house only for the purpose of bringing milk from the market, but when she met the accused she went away with

him to his friend's house where she was kept for the whole day, and taken to the Court next day to get the affidavit verified. There is no evidence except that of the girl to show as to under what circumstances she left the company of the accused and came back next day to the house of her father at the dead of the night. The learned Judge has not believed the statement of Lakshmi that she was threatened by the accused to stay at his friend's house, and in our opinion, he rightly disbelieved this testimony of Lakshmi, but the circumstance that the girl was a consenting party to the going away from her house cannot help the appellant.

We regret that we cannot also accept the argument of learned counsel for the appellant that it was the appellant who persuaded the girl to return to her father's house. In the first instance, the appellant did not take such a plea at the trial, and secondly he did not bring any circumstance on the record to warrant an inference that he had to take away Lakshmi from her house on account of the pressure on her side and then persuaded her to return to her father's house. The accused, as a matter of fact, did not come out with a defence that it was never his intention to keep Lakshmi with him. On the contrary, from his own statement before the committing Court, which has been brought on record, it is evident that he had developed intimacy with Lakshmi and they used to exchange letters frequently. These circumstances, in onr opinion, were sufficient for the Court below to draw an inference that Lakshmi had left her father's house at the instance of the appellant Babulal. The affidavit sworn by Lakshmi in the Court of the Railway Magistrate also does not lend support to the theory of the appellant that Lakshmi had gone with him with a view to stay temporarily.

It is, therefore, difficult for us to accept the argument of Mr. Bhimraj that Lakshmi had left her 'father's house only for a short 'time to get the affidavit sworn by her. If it were so, she could have done that on the very day she left her father's place and for that purpose there was no necessity for her to stay with the appellant for two days. The facts brought on record leave no doubt in our mind that the girl had been taken away by the appellant out of the guardianship of her father with some ulterior motive, and he cannot, therefore, escape the liability of committing an offence under Section 363, Indian Penal Code.

30. Now, there remains only the question of sentence. The learned Judge considered certain circumstances as extenuating ones and passed a lenlent sentence of two months' simple Imprisonment. He has mentioned in his judgment that Khanchand. father of the girl, is a poor man who has to maintain ten children and, therefore, naturally he cannot be in a fit state of financial position to get Lakshmi married soon; that Lakshmi has come of age and naturally the propensity for sexual intercourse was there to take her astray, and therefore, she wanted to get rid of the strained circumstances at home and wanted to enter into matrimonial relations with Babulal.

We do not find any fact on the record to warrant such inferences which the learned judge has drawn to pass such a mild sentence. They are not borne out from the record. We are of opinion that the act of taking and keeping away a young minor girl from her parents' house should be viewed by the Courts with sternness and the culprits should not be lightly dealt with in such matters, otherwise it is likely to have adverse effect on the morals of the society. It may be mentioned that the legislature has enacted the offence of kidnapping to protect the rights of the parents as well as to safeguard the interests of the minors. We feel that these rights of the parents must be zealously guarded by the Courts and they should not be allowed to be violated by the unscrupulous young-men, who becoming advance such lenient sentences may start feeling that their unsocial activities shall not entail grave consequences. In this view of ths matter, we are inclined to accept the revision petition filed by the State for enhancing the sentence of the appellant.

31. The appeal of Babulal appellant, therefore, fails and it is hereby dismissed, and his conviction under Section 363, Indian Penal Code is maintained. The revision application of the State is allowed and the sentence of Babulal is enhanced from two months' simple, imprisonment to one year's rigorous imprisonment. The fine imposed by the Court below is maintained.